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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	NO. CR-17-0091-JD
Plaintiff,)	
v.)	DEFERRED PROSECUTION AGREEMENT
)	BETWEEN THE UNITED STATES OF AMERICA
AK SCIENTIFIC, INC.,)	AND AK SCIENTIFIC, INC.
Defendant.)	

DEFERRED PROSECUTION AGREEMENT

Defendant AK Scientific, Inc. (the "Company"), by its undersigned representatives, and the United States Attorney's Office for the Northern District of California ("government"), enter into this deferred prosecution agreement ("Agreement"), the terms and conditions of which are as follows:

Acceptance of Responsibility

1. The Company acknowledges that it is named in the attached criminal Information filed in the Northern District of California charging the Company with: (1) failing and refusing to comply with requirements and rules promulgated under TSCA, in violation of 15 U.S.C. §§ 2614 and 2615; and (2) offering hazardous materials for transportation without labeling the packages as containing hazardous

DEFERRED PROSECUTION AGREEMENT
CR 17-0091-JD

1 materials, in violation of 49 U.S.C. § 5124. The Company (a) knowingly waives all rights to a speedy
2 trial pursuant to the Sixth Amendment to the United States Constitution, 18 U.S.C. § 3161, and Federal
3 Rule of Criminal Procedure 48(b); and (b) knowingly waives, for purposes of this Agreement and any
4 charges by the government arising out of the conduct described in Attachment A attached hereto and
5 incorporated by reference into this Agreement, any objection with respect to venue.

6 2. The Company admits, accepts, and acknowledges that it is responsible under United
7 States law for the acts of its officers, directors, employees, and agents as set forth in Attachment A, and
8 that the allegations described in Attachment A are true and accurate. Should the government pursue the
9 prosecution that is deferred by this agreement, the Company stipulates to the admissibility of
10 Attachment A in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not
11 contradict anything in Attachment A at any such proceeding. Neither this Agreement nor the
12 Information is a final adjudication of the matters addressed in such documents.

13 **Term of the Agreement**

14 3. This Agreement is effective for a period beginning on the date which it is signed, and
15 ending three years from that date (the "Term"). The Company agrees, however, that, in the event that
16 the government determines, in its sole discretion, that the Company has knowingly violated any
17 provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed
18 by the government, in its sole discretion, for up to a total additional time period of one year, without
19 prejudice to the government's right to proceed as provided in Paragraphs 14 through 17 below. The
20 government agrees to provide the Company with written notice prior to instituting such extension.
21 Within 30 days of receipt of such notice, the Company shall have the opportunity to respond to the
22 government in writing to explain the nature and circumstances of the alleged breach in question, as well
23 as the actions the Company has taken to address and remediate the situation, which explanation the
24 government shall consider in determining whether to require an extension. Any extension of the
25 Agreement extends to all terms of this Agreement for an equivalent period. Conversely, in the event
26 that the government finds, in its sole discretion, that there exists a change in circumstances sufficient to
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eliminate the need for any reporting requirements described herein, and that the other provisions of this Agreement have been satisfied, the term of the Agreement may be terminated early.

Relevant Considerations

4. The government enters into this Agreement based on the individual facts and circumstances presented by this case and the Company. Among the facts the government considered were the following: (a) the estimated number of packages that the Company shipped in violation of either the HMTA or TSCA; (b) remedial measures taken by the Company since the Company first became aware of the government's investigation in January of 2016, and further remedial measures taken by the Company since an indictment was returned in this case in January of 2017, which are described in further detail in Attachment B; and (c) the loss of significant customers suffered by the Company as a result of the indictment in this case, and the potential loss of additional customers if the Company were to be convicted of any offenses, resulting in the company's possible insolvency.

5. The Company shall cooperate fully with the government in any and all matters relating to the conduct described in this Agreement and Attachments A and B, until the date upon which all investigations and prosecutions arising out of such conduct are concluded, whether or not those investigations and prosecutions are concluded within the Term specified in Paragraph 3. At the request of the government, the Company shall also cooperate fully with other federal and state law enforcement and regulatory authorities and agencies, in any investigation of the Company or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and in Attachments A and B. The Company agrees that its cooperation pursuant to this Paragraph shall include, but not be limited to, the following:

- a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to its activities and those of its present and former directors, officers, employees, agents, and consultants, relating to the conduct described in this Agreement and in Attachments A and B, about which the Company has any knowledge or about which the government may require. This obligation of truthful disclosure

1 includes, but is not limited to, the obligation of the Company to provide to the
2 government, upon request, any document, record, or other tangible evidence about
3 which the government may inquire of the Company.

4 b. Upon request of the government, the Company shall designate a knowledgeable
5 employee, agent, or attorney to provide the government the information described
6 in Paragraph 5(a) above on behalf of the Company. It is further understood that
7 the Company must at all times provide complete, truthful, and accurate
8 information.

9 c. The Company shall use its best efforts to make available for interviews or
10 testimony, as required by the government, present or former officers, directors,
11 employees, agents, and consultants of the Company. This obligation includes, but
12 is not limited to, sworn testimony in any federal proceeding, as well as interviews
13 with federal and state law enforcement and regulatory authorities. Cooperation
14 under this Paragraph shall include identification of witnesses who, to the
15 knowledge of the Company, may have material information regarding the matters
16 under investigation.

17 d. With respect to any information, testimony, documents, records, or other
18 materials provided to the government pursuant to this Agreement, the Company
19 consents to any and all disclosures, subject to applicable law and regulations, to
20 other federal and state authorities of such materials as the government, in its sole
21 discretion, shall deem appropriate.

22 6. In addition to the obligations in Paragraph 5, during the Term of the Agreement, should
23 the Company discover any evidence or allegations of any shipments of hazardous materials in violation
24 of the HMTA or evidence or allegations of failure to comply with any of the rules and regulations
25 promulgated under TSCA, the Company shall promptly report such evidence or allegations to the
26 government.

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Payment of Criminal Monetary Penalties

7. The government and the Company agree that United States Sentencing Guidelines Section 8C2.10 governs any fine applicable to this case. The Company agrees to pay a criminal monetary penalty in the amount of \$100,000 to the United States Treasury, to be paid during the term of this Agreement. The Company and the government agree that this criminal monetary penalty is appropriate, given the facts and circumstances of this case, including the nature and extent of the Company's failure to comply with TSCA and HMTA over a period of several years, the estimated number of packages that the Company shipped over that time period that contained improperly labeled and/or improperly packaged hazardous materials, and the remedial measures that the Company has taken since becoming aware of the government's investigation. The \$100,000 criminal monetary penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the government that \$100,000 is the maximum criminal penalty that may be imposed in any future prosecution, and the government is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the government agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of the criminal monetary penalty described herein.

Conditional Release from Liability

8. Subject to paragraphs 14 through 17, the government agrees, except as provided herein and subject to related agreements between the government and co-defendant Peiwen Zhou, that it will not bring any further criminal or civil cases against the Company relating to the conduct described in Attachment A, or any other conduct disclosed by the Company to the government prior to the date of this Agreement. The Company agrees that the government may use any information related to the conduct described in Attachment A against the Company: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; or (c) in a prosecution or other proceeding relating to a violation of any provision of Title 26 to the United States Code.

1 a. This Paragraph does not provide any protection against prosecution for any future
2 conduct by the Company.

3 b. In addition, this Paragraph does not provide any protection against prosecution of
4 any present or former officer, director, employee, shareholder, agent, consultant,
5 contractor, or subcontractor of the Company for any violations committed by
6 them.

7 Compliance and Monitoring

8 9. The Company agrees to retain an independent monitor who will monitor the Company's
9 compliance with all applicable HMTA and TSCA rules and regulations. Within 30 days of the signing
10 of this Agreement, the Company will propose a pool of three qualified candidates for the independent
11 monitor, from which the government will select the independent monitor or direct the Company to
12 nominate additional qualified candidates. The Company is expressly permitted to include within this
13 pool of three qualified candidates the individual whom it previously hired as a result of the Indictment in
14 this case, Robert Richard; however, the Company agrees that the government is under no obligation to
15 select Mr. Richard as the independent monitor for purposes of this Agreement. The Company shall pay
16 reasonable compensation and expenses of the independent monitor chosen by the government. During
17 the term of this Agreement, the independent monitor will provide written reports of the results of the
18 independent monitor's compliance reviews every six (6) months to the United States Probation Office,
19 the government, and the Company. During the term of this Agreement, the Company will have a
20 reasonable opportunity to cure any alleged violation of the TSCA or HMTA regulations identified by:
21 (1) the independent monitor; (2) any regulatory agency, including the Pipeline and Hazardous Materials
22 Safety Administration ("PHMSA"), the Federal Aviation Administration ("FAA"), or EPA; (3) the
23 United States Probation Office; (4) or the government. The government will not oppose a motion by the
24 Company for early termination of the monitor if: (1) after the conclusion of 18 months, that is,
25 following the third 6-month compliance review report of its three-year term, the Company is in full
26 compliance with the requirements of this Agreement, including as determined by the independent
27 monitor and the United States Probation Office; and (2) the independent monitor or any regulatory
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1 agency, including PHMSA, the FAA, or the EPA, have not identified any violations of the TSCA or
2 HMTA regulations.

3 10. The Company agrees that Peiwen Zhou will resign as CEO and President of AK
4 Scientific no later than the date of his sentencing. The Company agrees that Peiwen Zhou will take no
5 part in and serve no management or executive function with regard to matters relating to compliance
6 with any governmental regulations, or supervision of employees with regard to those tasks. The
7 Company agrees that Peiwen Zhou will take no part in the hiring, termination, or discipline of any
8 employees in departments that are tasked with regulatory compliance (i.e. shipping and receiving of
9 hazardous chemicals and related regulatory notices or filings). The Company agrees that if Peiwen
10 Zhou remains in any capacity at AK Scientific, he will be limited to working only as the company's
11 Principal Scientist. The Company agrees that Peiwen Zhou's responsibilities as Principal Scientist will
12 be limited to the development and marketing of AK Scientific's product catalog, and oversight of AK
13 Scientific's quality control and quality assurance programs regarding purity, identity, and other quality
14 specifications for AK Scientific's products. The Company agrees that any violation of the terms set out
15 in this paragraph shall constitute a material breach of this Agreement.

16 11. During the Term of this Agreement, the Company shall conduct a presentation at an
17 educational seminar or industry convention approved by the independent monitor appoint under
18 Paragraph 9. That presentation shall acknowledge the existence of this Agreement, and will focus on the
19 importance of complying with all relevant governmental regulations, with an emphasis on HMTA and
20 TSCA. That presentation will also explain how the Company has instituted an effective compliance
21 program, and identify measures the Company has taken to ensure regulatory compliance to prevent
22 recurrence of similar violations in the future. The specific subject matter, venue, and topics shall be
23 approved by the independent monitor.

24 **Deferred Prosecution**

25 12. In consideration of (a) the remedial measures taken by the Company as set forth in
26 Attachment B and (b) the Company's payment of criminal monetary penalties described above in
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1 paragraph 7, the government agrees that any criminal prosecution of the Company for the conduct set
2 forth in Attachment A is hereby deferred for the Term of this Agreement.

3 13. The government further agrees that if the Company fully complies with all of its
4 obligations under this Agreement, the government will not continue the criminal prosecution against the
5 Company as described in Paragraph 1, and, at the conclusion of the Term, this Agreement shall expire.
6 Within 30 days of the Agreement's expiration, the government shall seek dismissal with prejudice of the
7 Information filed against the Company described in Paragraph 1, and agrees not to file charges in the
8 future against the Company based on the conduct described in this Agreement and in Attachment A.

9 **Breach of the Agreement**

10 14. If, during the Term of this Agreement, the Company (a) commits any felony under U.S.
11 federal law subsequent to the signing of this Agreement, (b) provides in connection with this Agreement
12 deliberately false, incomplete, or misleading information, (c) fails to cooperate as set forth in Paragraph
13 5, (d) fails to implement the monitoring program as set forth in Paragraph 9, its removal of Peiwen Zhou
14 from all compliance and regulatory functions as set forth in Paragraph 10, or the industry presentation
15 plan as set forth in Paragraph 11; (e) commits any acts that, had they occurred within the jurisdictional
16 reach of the HMTA or TSCA, would be a violation of either of those statutes; or (f) otherwise fails
17 specifically to perform or fulfill completely each and every one of the Company's obligations under the
18 Agreement, the government shall, in its sole discretion, determine whether the Company has breached
19 the Agreement. If the government determines that the Company has breached the Agreement, the
20 Company shall thereafter be subject to prosecution for any federal criminal violation of which the
21 government has knowledge, including, but not limited to, the charges in the Information described in
22 Paragraph 1. Any such prosecution may be premised on information provided by the Company. Any
23 such prosecution relating to the conduct described in Attachment A or relating to the conduct known to
24 the government prior to the date on which this Agreement was signed that is not time-barred by the
25 applicable statute of limitations on the date of the signing of this Agreement may be commenced against
26 the Company notwithstanding the expiration of the statute of limitations between the signing of this
27 Agreement and the expiration of the Term plus one year. Thus, by signing this agreement, the Company
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1 agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the
2 date of the signing of this Agreement shall be tolled for the Term plus one year.

3 15. In the event that the government determines that the Company has breached this
4 Agreement, the government agrees to provide the Company with written notice of such breach prior to
5 instituting any prosecution resulting from such breach. Within 30 days of receipt of such notice, the
6 Company shall have the opportunity to respond to the government in writing to explain the nature and
7 circumstances of such breach, as well as the actions the Company has taken to address and remediate the
8 situation, which explanation the government shall consider in determining whether to institute a
9 prosecution.

10 16. In the event that the government determines that the Company has breached this
11 Agreement, Attachment A shall be admissible in evidence in any and all criminal proceedings brought
12 by the government against the Company. The Company shall not assert any claim under the United
13 States constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules
14 of Evidence, or any other federal rule that Attachment A should be suppressed or is otherwise
15 inadmissible.

16 17. The Company acknowledges that the government has made no representations,
17 assurances, or promises concerning what sentence may be imposed by the Court if the Company
18 breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges
19 that any such sentence is solely within the discretion of the Court and that nothing in this Agreement
20 binds or restricts the Court in the exercise of such discretion.

21 **Sale or Merger of Company**

22 18. Except as may otherwise be agreed by the parties hereto in connection with a particular
23 transaction, the Company agrees that in the event it sells, merges, or transfers all or substantially all of
24 its business operations as they exist as of the date of this Agreement, whether such sale is structured as a
25 sale, asset sale, merger, or transfer, it shall include in any contract for sale, merger, or transfer a
26 provision binding the purchaser, or any successor in interest thereto, to the obligations described in this
27 Agreement.

Limitations on Binding Effect of Agreement

19. This Agreement is binding on the Company and the government but specifically does not bind any other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, including but not limited to the civil enforcement division of the Federal Aviation Administration, although the government will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

Complete Agreement

20. This Agreement sets forth all the terms of the agreement between the Company and the government. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the government, the attorney for the Company, and a duly authorized representative of the Company.

AGREED:

BRIAN J. STRETCH
United States Attorney

Dated: 12/20/17

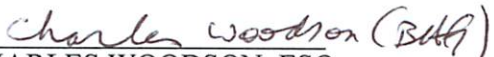

S. WAQAR HASIB
Assistant United States Attorney

FOR AK SCIENTIFIC, INC.:

Dated: 12/20/17


KEVIN ZHOU
AK Scientific, Inc.

Dated: December 20, 2017


CHARLES WOODSON, ESQ.
Attorney for Defendant

ATTACHMENT A
STATEMENT OF FACTS

The following Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement (the “Agreement”) between the United States Attorney’s Office for the Northern District of California (the “USAO”) and AK Scientific, Inc. (the “Company”). The Company hereby agrees and stipulates that the following information is true and correct:

The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees and agents as set forth below. Should the USAO pursue the prosecution that is deferred by this Agreement, the Company agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding. If this matter were to proceed to trial, the USAO would prove beyond a reasonable doubt, by admissible evidence, the facts alleged below. This evidence would establish the following:

Relevant Entities and Individuals

The Company was incorporated on June 23, 2004, and began operating in approximately 2006. The Company was involved in the business of selling research and specialty chemicals. The Company was initially located in Mountain View, California. In approximately 2010, the Company relocated to Union City, California.

PEIWEN ZHOU (herein “ZHOU”) was the Company’s founder, owner, and chief executive officer. ZHOU received a Ph.D. in chemistry in 1998. After founding the Company, ZHOU employed between 4 and 50 other people in various capacities, including shipping and receiving.

The Company purchased chemicals from other chemical supply companies and sold chemicals from its inventory to customers. The Company’s customers included universities, research laboratories, and other entities. Some of the Company’s customers were located domestically, including in the San Francisco Bay Area. Other customers were located internationally.

The Company used common carrier companies to obtain chemicals from its suppliers, and to deliver chemicals to its customers. The Company typically sent and received these chemicals by both air and ground delivery.

Criminal Conduct

Starting in 2008, and continuing until approximately February 3, 2016, on a number of occasions ZHOU caused employees in the Company's shipping department to ship hazardous materials listed in the HMTA as non-hazardous materials, both domestically and internationally, and by both ground and air, in violation of the HMTA requirements. ZHOU also caused employees in the Company's purchasing and receiving department to purchase chemicals, including chemicals listed on the TSCA Inventory, which were sometimes shipped from suppliers in China under different names, without filing corresponding TSCA certification statements.

As one example, on approximately July 3, 2014, the Company shipped a package containing 100 grams of 1,2-dibromoethane by ground shipment to a company in Northern California without properly labeling the package with the following label, identifying it as a Class 6.1 poisonous inhalation hazard:



As another example, on approximately September 19, 2012, the Company received a 25 kilogram shipment of 1,2-dibromoethane from China under a different name, and failed to file the corresponding TSCA certification statement necessary for imports of 1,2-dibromoethane.

ATTACHMENT B

AK Scientific has taken extensive steps in remediation, since learning of the government's investigation. Specifically, the Company has reassigned management responsibilities and created a de facto Corporate Compliance Officer ("CCO"), a position which will be formalized in conjunction with this Agreement. Specifically, the Company has instituted a robust and regular training program, updated and changed its standard operating procedures ("SOP") to ensure regulatory compliance, drafted and updated the Company's SOP manuals, and implemented numerous technical changes to the Company's computer and software programs to enhance regulatory compliance. The Company has also hired consultants to advise it with regard to various regulatory responsibilities, which included on-site evaluation. While the Company has expended significant resources on this work, it has made every effort to retain its employees.

With regard to training, the Company has hired a consultant with several decades of hazardous materials experience who conducted a multi-day on site training for its employees and management. This training addressed a variety of topics, including dangerous good regulations, classification of dangerous goods, and preparation of dangerous goods shipments. Additional function-specific training and continuing education has also occurred regularly on such topics as "Hazardous Materials Air Shipper Certification Course (IATA)," "TSCA Regulations," "Shipping Hazmat by Ground," "Managing Hazard Communication," "TSCA: Chemical Reporting and Recordkeeping," and "Conditionally Exempt Small Quantity Generators." Finally, the Company has instituted weekly "employee-led" trainings that are researched, prepared, and presented in conjunction with the CCO.